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INTERSTATE COMMERCE COMMISSION

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**CONDITIONAL SALE AGREEMENT**

**Dated as of March 1, 1970**

**among**

**W. O. BREM and T. K. HAND, JR.,**

**BROOKE/ TRICIA CORPORATION**

**and**

**PENN CENTRAL TRANSPORTATION COMPANY**

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**CONDITIONAL SALE AGREEMENT** dated as of March 1, 1970, among the persons named in Item 1 of Annex A hereto (hereinafter called the Vendor or Owners as more particularly set forth in Article 27 hereof), BROOKE/TRICIA CORPORATION, a New York corporation (hereinafter called the Company), and PENN CENTRAL TRANSPORTATION COMPANY, a Pennsylvania corporation (hereinafter called the Guarantor or the Lessee).

WHEREAS, the Owners agree to acquire, sell and deliver to the Company, and the Company agrees to purchase, the railroad equipment described in Annex B hereto (hereinafter called the Equipment);

WHEREAS, GATX-Armco-Boothe, an Ohio general partnership (hereinafter called the Vendee), is acquiring pursuant to an assignment dated as of March 1, 1970, all the Company's right, title and interest in the Equipment and under this Agreement; and

WHEREAS, the Vendee is executing a lease of the Equipment as of the date hereof to the Lessee in substantially the form annexed hereto as Annex C (hereinafter called the Lease) and the Guarantor is willing to guarantee to the Vendor the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Company under this Agreement and has joined in this Agreement for the purpose of setting forth the terms and conditions of such guaranty and making certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

**ARTICLE 1. *Construction and Sale.*** Pursuant to this Agreement, the Owners have acquired or will acquire and

will sell and deliver the Equipment to the Company and the Company will purchase from the Owners and accept delivery of and pay for (as hereinafter provided) the Equipment, each unit of which will be a new standard-gauge unit of railroad equipment, constructed in accordance with the specifications referred to in Annex B hereto and in accordance with such modifications thereof as may have been agreed upon in writing by the Owners and the Company and the Guarantor (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of the Equipment will conform to all Department of Transportation requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of the Equipment as of the date of this Agreement.

ARTICLE 2. *Delivery.* The Owners will deliver the various units of the Equipment to the Company, at such point or points within the United States of America as have been or will be specified by the Company and the Guarantor; *provided, however*, that no delivery of any unit of the Equipment shall be made until this Agreement and the Lease have been filed pursuant to Section 20c of the Interstate Commerce Act.

Any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before December 31, 1970 (unless such date is extended by the Company, the Guarantor and the Vendor by appropriate written agreement), shall be excluded from this Agreement and not included in the term "Equipment" as used in this Agreement. In the event of any such exclusion (a) the Vendor, the Company and the Guarantor shall execute an agreement supplemental hereto limiting this Agreement to the Equipment theretofore delivered, accepted and settled for hereunder.

The Equipment shall be subject to inspection and approval prior to delivery by inspectors or other authorized representatives of the Company (who may be employees of the Guarantor). From time to time upon the completion of the construction of each unit or of a number of units of the Equipment, such unit or units shall be presented to such inspector or other authorized representative for inspection at the place designated for delivery of the Equipment and, if each such unit conforms to the specifications, such inspector or representative shall execute and deliver to the Owners, in such number of counterparts or copies as may reasonably be requested, a certificate of delivery and acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Company and are marked in accordance with the provisions of Article 9 hereof. The Owners give no warranties, express or implied, with regard to the Equipment except as to title to the Equipment as set forth in Article 4 hereof.

On delivery of each of the units of Equipment hereunder and acceptance thereof on behalf of the Company as aforesaid, the Company shall assume with respect thereto the responsibility and risk of loss.

**ARTICLE 3. *Purchase Price and Payment.*** The base price per unit of the Equipment is set forth in Annex B hereto. Such base price is subject to such increase or decrease as is agreed to by the Owners, the Company and the Guarantor. The term "Purchase Price" as used herein shall mean the base price as so increased or decreased. If on any Closing Date (as hereinafter defined in this Article 3) the aggregate of the Invoiced Purchase Prices (as hereinafter defined in this Article 3) for which settlement has theretofore been and is then being made under this Agreement and the Conditional Sale Agreement re-

ferred to in Item 3 of Annex A hereto (hereinafter called the Other Agreement), would, but for the provisions of this sentence, exceed \$18,095,810 (or such higher amount as the Company may at its option agree to), the Owners (and any assignee of the Owners) and the Guarantor will, upon request of the Company, enter into an agreement excluding from this Agreement such unit or units of Equipment, then proposed to be settled for and specified by the Company, as will, after giving effect to such exclusion and concurrent exclusion, if any, under the Other Agreement, reduce such aggregate Invoiced Purchase Prices under both this Agreement and the Other Agreement to not more than \$18,095,810 (or such higher amount as aforesaid).

The Equipment shall be settled for in groups of units of the Equipment delivered to and accepted by the Company having an aggregate Purchase Price which, when added to the purchase price of any units of railroad equipment under the Other Agreement being settled for concurrently therewith, is not less than \$5,000,000 (each such group being hereinafter called a Group), unless the Company, the Guarantor and the Owners shall otherwise agree; *provided, however,* that, if the aggregate Purchase Price of all units of the Equipment hereunder and the purchase price of the units of railroad equipment under the Other Agreement, for which settlement shall not have been made, is less than \$5,000,000, such units of the Equipment shall constitute an additional Group for the purpose of settlement. The term "Closing Date" with respect to any Group shall mean such date (not earlier than April 28, 1970, and not later than December 31, 1970), occurring not less than seven business days following presentation by the Owners to the Company of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Owners by written notice delivered to the

Company and the Vendor at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and legal holidays in the City of Philadelphia.

The Company hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment, as follows:

(a) On each Closing Date with respect to each Group (i) an amount equal to 27.99% of the aggregate Purchase Price of such Group plus (ii) the amount by which (x) 72.01% of the aggregate of the Purchase Price of all units of the Equipment covered by this Agreement and the purchase price of all units of railroad equipment covered by the Other Agreement, for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced price being herein called the Invoiced Purchase Prices) exceeds (y) the sum of \$13,030,000 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to clause (ii) of this subparagraph (a) and clause (ii) of subparagraph (a) of the third paragraph of Article 3 of the Other Agreement (said excess of clause (x) over clause (y) being hereinafter called the Excess Amount); *provided, however*, that if settlement is also being made on such Closing Date for units of railroad equipment under the Other Agreement, the amount payable pursuant to clause (ii) of this subparagraph (a) shall be that proportion of the Excess Amount which the Invoiced Purchase Price payable on such Closing Date under this Agreement is of the aggregate of all the Invoiced Purchase Prices payable on such Closing Date under this Agreement and the Other Agreement; and

(b) In 60 consecutive quarterly-annual instalments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

The first instalment of the portion of the Purchase Price of each Group of Equipment payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for all Groups being hereinafter called the Conditional Sale Indebtedness) shall be payable on July 28, 1970, and subsequent instalments shall be payable thereafter on each January 28, April 28, July 28 and October 28 to and including April 28, 1985 (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a Payment Date. The unpaid balance of the Conditional Sale Indebtedness shall bear interest from the Closing Date in respect of which such indebtedness was incurred at the rate of 10% per annum and such interest shall be payable, to the extent accrued, on each January 28, April 28, July 28 and October 28, commencing July 28, 1970. Except as hereinafter provided in this paragraph and in the next succeeding paragraph of this Article 3, the principal amount of Conditional Sale Indebtedness payable on each of the 60 quarterly-annual Payment Dates shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 60 instalments of principal and interest will completely amortize the Conditional Sale Indebtedness. For the sole purpose of determining the principal amount of Conditional Sale Indebtedness payable pursuant to the preceding sentence on Payment Dates occurring prior to the earlier of the last Closing Date (which shall be

specified in a written notice given to the Vendor by the Guarantor) and December 31, 1970 (said earlier date being hereinafter called the Cut-Off Date) it shall be assumed that (i) the Conditional Sale Indebtedness is that proportion of \$13,030,000 which the aggregate base prices set forth in Annex B hereto of all units of the Equipment hereunder bears to the sum of the aggregate base prices set forth in Annex B hereto of all units of the Equipment hereunder and the aggregate base prices set forth in Annex B to the Other Agreement of all units of the railroad equipment thereunder and (ii) the unpaid balance of such assumed Conditional Sale Indebtedness bears interest from April 28, 1970, at the rate of 10% per annum and such interest is payable, to the extent accrued, on each January 28, April 28, July 28 and October 28, commencing July 28, 1970.

Instalments of principal payable after the Cut-Off Date shall be reduced in the order of maturity thereof by the amount, if any, by which (x) the aggregate amount of instalments of principal paid prior to the Cut-Off Date pursuant to the next preceding paragraph of this Article 3 exceeds (y) the aggregate amount of instalments of principal which would have been paid prior to the Cut-Off Date if the Conditional Sale Indebtedness had been assumed to be in an amount equal to that portion of the aggregate Purchase Price of all units of the Equipment actually payable pursuant to subparagraph (b) of the third paragraph of this Article 3.

The Company will furnish to the Vendor and the Guarantor promptly after each Closing Date a schedule, in such number of counterparts as shall be requested by the Vendor, showing the respective amounts of principal and interest payable on each Payment Date.

Interest under this Agreement shall be determined on the basis of a 360-day year of twelve 30-day months.



The Company will pay interest at the rate of  $10\frac{1}{2}\%$  per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 5 hereof, the Company shall not have the privilege of prepaying any portion of the Conditional Sale Indebtedness prior to the date it becomes due.

The parties hereto contemplate (subject to the limitations set forth in the first paragraph of this Article 3) that the Company will furnish that portion of the Purchase Price of each Group of the Equipment as is required under subparagraph (a) of the third paragraph of this Article 3 and that an amount equal to the balance of such Purchase Price shall be paid to the Owners by an assignee of the Owners' right, title and interest under this Agreement pursuant to an agreement and assignment (hereinafter called the Assignment) between the Owners and The First Pennsylvania Banking and Trust Company, as Agent (hereinafter called the Assignee), under the Finance Agreement dated as of March 1, 1970 (hereinafter called the Finance Agreement), among the Assignee, the Guarantor and the parties named in Schedules A and B thereto.

It is agreed that the obligation of the Company to pay to the Vendor any amount required to be paid pursuant to the third paragraph of this Article 3 with respect to any Group of Equipment is specifically subject to the conditions precedent that:

- (a) no event of default of the Guarantor specified herein or of the Lessee under the Lease, nor any event which with the lapse of time and/or notice provided for herein or in the Lease would constitute such an event of default, shall have occurred and be continuing;

(b) the Company shall have received signed counterparts of the documents listed in Sections 5(a), (b), (c), (d), (e) and (g) of the Assignment;

(c) the Company shall have received an opinion of counsel for the Owners, addressed to the Company, to the effect that the Owners have legal title to the Equipment and good and lawful right to sell such Equipment and that title to such Equipment is free of all claims, liens, security interests, mortgages, or other encumbrances of any nature except only the rights of the Company under this Agreement and the rights of the Guarantor under the Lease;

(d) the Company shall have received (i) the opinions of counsel required by §§ 14 and 15 of the Lease and (ii) such other documents as the Company may reasonably request; and

(e) the Assignee shall have paid to the Owners the amounts contemplated to be paid by it as provided in the preceding paragraph of this Article 3, in Section 5 of the Assignment and in Paragraph 4 of the Finance Agreement.

ARTICLE 4. *Title to the Equipment.* The Owners and the Guarantor hereby warrant to the Company that at the time of delivery of each unit of the Equipment to the Company under this Agreement the Owners will have legal title to such unit and good and lawful right to sell such unit and title to such unit will be free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Company under this Agreement and the rights of the Guarantor under the Lease. The Vendor shall and hereby does retain the full legal title to and property in the Equipment until the Company shall have made all the payments hereunder and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the posses-

sion and use thereof by the Company or the Guarantor as herein provided. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 5 hereof, when and only when the Vendor shall have been paid the full amount of the Purchase Price of all the Equipment, together with interest and all other payments as herein provided, and all the Company's obligations herein contained shall have been performed, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will, at the expense of the Company, execute appropriate instruments confirming such passage to the Company of title to and property in the Equipment free of all liens and encumbrances created or retained hereby and deliver such instruments to the Company at its address specified in Article 23 hereof, and will, at the expense of the Company, execute in the same manner and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Company to the Equipment, and will pay to the Company any money paid to the Vendor pursuant to Article 5 hereof and not theretofore applied as therein provided.

The Company hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and de-

liver such instruments or to file such certificate within a reasonable time after written demand of the Company.

ARTICLE 5. *Casualty Occurrences.* In the event that any unit of the Equipment shall be or become worn out, lost, stolen, destroyed, or in the opinion of the Company, irreparably damaged, from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being herein called Casualty Occurrences), the Company shall, within five business days after it shall have received notice of a Casualty Occurrence, fully inform the Vendor in regard thereto. If the Company receives notice thereof under the Lease, such notice to the Vendor shall be dated as of the date such notice is given to the Company under the Lease. On the January 28 or July 28 next succeeding the date of such notice (or, in the event such January 28 or July 28 shall be within five business days after the date of such notice, on the following January 28 or July 28) whichever is the earlier, the Company shall pay to the Vendor a sum equal to the Casualty Value of such unit suffering a Casualty Occurrence as of the date of such payment and shall file with the Vendor a certificate setting forth the Casualty Value of such unit; *provided, however*, that the first payment in respect of a Casualty Occurrence shall in no event be made prior to January 28, 1971; and *provided, further*, that payment shall be made on April 28, 1985, for any Casualty Occurrence for which payment has not been made prior to April 28, 1985. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness of the Group of which such unit was a part and the Company will promptly furnish to the Vendor and the Guarantor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Article 3 hereof, so that the remaining payments shall be substantially equal.

Upon payment by the Company to the Vendor of the Casualty Value of any unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of, title to and property in such unit shall pass to and vest in the Company, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Company, will execute and deliver to the Company, at the expense of the Company, an appropriate instrument confirming such passage to the Company of all the Vendor's right, title and interest in such unit, in recordable form, in order that the Company may make clear upon the public records the title of the Company to such unit.

The Casualty Value of each unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Article 5), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of a Group made pursuant to Article 3 hereof shall be deemed to be a payment on each unit of the Equipment in such Group in like proportion as the original Purchase Price of such unit bears to the aggregate original Purchase Price of the Group in which such unit is included.

Although the Guarantor shall not be required to maintain insurance on any unit of the Equipment, the Guarantor agrees that the benefits of any insurance maintained by it upon the units of the Equipment will be made available to the Company and the Vendor, as their interests may appear, to the extent the Guarantor is permitted to do so under such policies of insurance.

**ARTICLE 6. *Obligations of Guarantor.*** The Guarantor, for value received, hereby unconditionally guarantees to

the Vendor by endorsement (through its execution hereof) the due and punctual payment of that portion of the Purchase Price of the Equipment payable pursuant to subparagraph (b) of the third paragraph of Article 3 hereof and interest thereon, and the due and punctual performance of all obligations of the Company under this Agreement and unconditionally guarantees to the Vendor that all sums payable by the Company under this Agreement (except for the sums payable by the Company pursuant to subparagraph (a) of the third paragraph of Article 3 hereof), will be promptly paid when due, together with interest thereon as herein provided, whether at stated maturity or by declaration or otherwise, and in case of default by the Company in any such obligations or payments the Guarantor agrees punctually to perform or pay the same, irrespective of any enforcement against the Company of any of the rights of the Vendor hereunder.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or any other circumstance which might otherwise constitute a legal or equitable discharge of a surety or guarantor and irrespective of any other circumstances which might otherwise limit the recourse of the Vendor to the Company. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Vendor of any of its rights hereunder and no action by the Vendor to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder.

In the event that the Guarantor shall make any payments to the Vendor on account of its guaranty hereunder, the Guarantor shall, by subrogation, be entitled to the rights of the Vendor against the Company by reason of such payments and with respect to any units of the Equipment to the extent of the amount so paid, but such rights shall be subordinate in all respects to such rights of the Vendor and shall not be exercisable until the Vendor shall have been paid all sums payable under this Agreement (including the payment of the entire unpaid Conditional Sale Indebtedness and interest thereon).

ARTICLE 7. *Maintenance and Repairs.* The Company agrees that, at its own cost and expense, it will maintain and keep each unit of the Equipment in good order and repair.

ARTICLE 8. *Reports and Inspections.* On or before April 15 in each year, commencing with the year 1971, the Company will cause to be furnished to the Vendor in such number of counterparts as the Vendor may request an accurate statement as of the preceding December 31 (a) showing the amount, description and numbers of the Equipment then covered hereby, the amount, description and numbers of all units of the Equipment that may have suffered a Casualty Occurrence during the preceding 12 months (or since the date of delivery hereunder of the Equipment in the case of the first such statement) and such other information regarding the condition and state of repair of the Equipment as the Vendor may reasonably request, and (b) stating that, in the case of all units of the Equipment repainted or repaired during the period covered by such statement, the markings required by Article 9 hereof have been preserved or replaced.

ARTICLE 9. *Identification Marks.* The Company will cause each accepted unit of the Equipment to be kept num-

bered with its identifying number as set forth in Annex B and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of such unit, in letters not less than one inch in height, the name of the Vendor followed by the word "SECURITY-OWNER" or other appropriate words designated by the Vendor, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the title of the Vendor to such unit and the rights of the Vendor under this Agreement. The Company will not permit any such unit to be placed in operation or exercise any control or dominion over the same until such names and words shall have been so marked on both sides thereof and will replace or cause to be replaced promptly any such names and word or words which may be removed, defaced or destroyed. The Company will not permit the identifying number of any unit of Equipment to be changed except in accordance with a statement of new identifying numbers to be substituted therefor, which statement previously shall have been filed with the Vendor and filed, recorded or deposited in all public offices where this Agreement will have been filed, recorded or deposited.

Except as above provided, the Company will not allow the name of any person, association or corporation to be placed on any units comprising the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Company may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Company or the Guarantor or its affiliates on railroad equipment used by it of the same or a similar type for convenience of identification of the interests of the Company and the Guarantor therein.

ARTICLE 10. *Taxes.* All payments to be made by the Company hereunder will be free of expense to the Vendor



for collection or other charges and will be free of expense to the Vendor with respect to the amount of any local, state or Federal or Canadian (Dominion or Provincial) taxes (other than net income, gross receipts [except gross receipts in the nature of or in lieu of sales taxes], franchise taxes measured by net income based on such receipts, excess profits and similar taxes), assessments, license fees, charges, fines or penalties (hereinafter called impositions) hereafter levied or imposed upon, or in connection with, or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Company assumes and agrees to pay on demand in addition to the Purchase Price of the Equipment. The Company will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Vendor solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Vendor or result in a lien upon any unit of the Equipment; *provided, however*, that the Company shall be under no obligation to pay any impositions so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder. If any such impositions shall have been charged or levied against the Vendor directly and paid by the Vendor, the Company shall reimburse the Vendor on presentation of an invoice therefor.

ARTICLE 11. *Compliance with Laws and Rules.* During the term of this Agreement, the Company will comply, and will cause any lessee of the Equipment to comply, in all respects with all laws of the jurisdictions in which opera-

tions involving the Equipment may extend, with the interchange rules of the Association of American Railroads, and with all lawful rules of the Interstate Commerce Commission, the Department of Transportation and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the operation or use of the Equipment; and in the event that such laws or rules require the alteration of the Equipment, the Company will conform therewith, at its expense, and will maintain the same in proper condition for operation under such laws and rules; *provided, however*, that the Company may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

ARTICLE 12. *Possession and Use.* The Company or the Vendee, so long as the Company shall not be in default under this Agreement, shall be entitled, from and after delivery of the Equipment by the Owners to the Company, to the possession of the Equipment and the use thereof, but only upon and subject to all the terms and conditions of this Agreement.

The Company or the Vendee may lease the Equipment to the Lessee or its assigns as permitted by, and for use as provided in, the Lease; *provided, however*, that (the Lessee hereby so acknowledging) if and only if the Lessee shall be in default under the Lease or under this Agreement in its capacity as Guarantor or otherwise, the rights of the Lessee and its permitted assigns under the Lease shall be subordinated and junior in rank to the rights, and shall be subject to the remedies, of the Vendor under this Agreement and, so long as no such default shall be continuing, the Lessee shall be entitled to possession and use of the

Equipment. The Company hereby agrees that the Vendee will not exercise any of the remedies provided in the case of an Event of Default under and as defined in the Lease unless it shall notify the Vendor and the Guarantor in writing of the Vendee's intended exercise thereof, and hereby further agrees to furnish to the Vendor copies of all summonses, writs, processes and other documents served by the Vendee upon the Lessee or served by the Lessee upon the Vendee in connection therewith.

So long as no event of default as specified in Article 17 hereof shall have occurred and be continuing hereunder, the Company or the Vendee shall be entitled to the possession and use of the Equipment and the Equipment may be used upon the lines of railroad owned or operated by the Lessee (or any other railroad company approved by the Vendor) or upon lines of railroad over which the Lessee has trackage or other operating rights or over which railroad equipment of the Lessee is regularly operated pursuant to contract, trackage or other operating rights and the Equipment may be used upon other railroads in the usual interchange of traffic but only upon and subject to all the terms and conditions of this Agreement; *provided, however*, that the Company will not assign or permit the assignment of any unit of the Equipment to service involving the regular operation and maintenance thereof outside the United States of America. The Company or the Vendee may also lease the Equipment to any other railroad company with the prior written consent of the Vendor, provided that the rights of such lessee are made expressly subordinate to the rights and remedies of the Vendor under this Agreement and provided such lessee shall expressly agree to abide by the proviso to the next preceding sentence. A copy of such lease shall be furnished to the Vendor.

ARTICLE 13. *Prohibition Against Liens.* The Company will pay or satisfy and discharge any and all sums claimed

by any party by, through or under the Company or its successors or assigns which, if unpaid, might become a lien or a charge upon the Equipment, or any unit thereof, equal or superior to the title of the Vendor thereto, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate legal proceedings in any reasonable manner and the nonpayment thereof does not, in the opinion of the Vendor, adversely affect the property or rights of the Vendor hereunder.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. *Indemnities and Warranties.* The Company agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of title to the Equipment, or out of the use and operation thereof during the period when title thereto remains in the Vendor. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price and the conveyance of the Equipment, as provided in Article 4 hereof, or the termination of this Agreement in any manner whatsoever.

The Guarantor guarantees that the units of the Equipment have been or will be built in accordance with the Specifications and the other specifications, requirements and standards set forth in Article 1 hereof and warrants that

the Equipment will be free from defects in material and workmanship under normal use and service.

The Company will bear the risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of any unit of or all the Equipment.

ARTICLE 15. *Patent Indemnity.* The Guarantor agrees to indemnify, protect and hold harmless the Company and the Vendor from and against any and all liability, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Company or the Vendor because of the use in or about the construction or operation of the Equipment, or any unit thereof, of any design, process, combination, article or material infringing or claimed to infringe on any patent or other right. Said covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due hereunder, the satisfaction and discharge of this Agreement or the termination of this Agreement in any manner whatsoever.

ARTICLE 16. *Assignments.* The Company will not sell, assign or transfer its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment unless such assignment or transfer is made expressly subject in all respects to the rights and remedies of the Vendor hereunder. Any such assignment or transfer may be made by the Company without the assignee or transferee assuming any of the obligations of the Company hereunder (and the Company shall, in any event, remain liable for all of the obligations of the Company hereunder), but shall be subject to the rights and remedies of the Vendor hereunder (including, without limitation, all rights and remedies against the Company and the Guarantor). The Vendor and the Guarantor recognize

that the Company is assigning to the Vendee, subject to the terms and conditions of this Agreement, all the Company's right, title and interest in the Equipment and under this Agreement.

All or any of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Company and the benefits arising from the undertakings of the Guarantor hereunder, may be assigned by the Vendor and re-assigned by an assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Owners from, any of the obligations of the Owners to deliver the Equipment in accordance herewith or to respond to their agreements contained herein, or relieve the Company or the Guarantor of their respective obligations to the Owners contained or referred to in Articles 1, 2, 3, 6, 10, 14 and 15 hereof or in the last paragraph of this Article 16 or any other obligation which, according to its terms and context, is intended to survive an assignment.

Upon any such assignment either the assignor or the assignee shall give written notice to the Company and the Guarantor, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall, by virtue of such assignment, acquire all the Vendor's right, title and interest in and to the Equipment, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Company and the Guarantor, respectively, of the notification of any such assignment, all payments thereafter to be made by the Company or the Guarantor hereunder shall, to the extent so assigned, be made to the assignee at the address of the assignee.

The Company and the Guarantor recognize that it is the custom of railroad equipment manufacturers or sellers to

assign agreements of this character and understand that the assignment of this Agreement, or of some of or all the rights of the Vendor hereunder, is contemplated. The Company and the Guarantor expressly represent, for the purpose of assurance to any person, firm or corporation considering the acquisition of this Agreement or of all or any of the rights of the Vendor hereunder, and for the purpose of inducing such acquisition, that in the event of such assignment by the Vendor as hereinbefore provided the rights of such assignee to the entire unpaid Purchase Price of the Equipment or such part thereof as may be assigned, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Owners with respect to the Equipment or the delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Company or the Guarantor by the Owners. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Company or the Guarantor, as the case may be, against and only against the Owners.

In the event of any such assignment or successive assignments by the Vendor of title to the Equipment and of the Vendor's rights hereunder with respect thereto, the Company will, whenever requested by such assignee, change the names and word or words to be marked on each side of each unit of the Equipment, so as to indicate the title of such assignee to the Equipment with such names and word or words as shall be specified by such assignee, subject to the requirements of the laws of the jurisdictions in which the Equipment shall be operated relating to such names and word or words for use on equipment covered by conditional

sale agreements with respect to railroad equipment. The cost of marking such names and word or words with respect to the first assignee of this Agreement (or to a successor agent in case the first assignee is an agent) shall be borne by the Guarantor. The cost of marking such names and word or words in connection with any subsequent assignment (other than to a successor agent if the first assignee is an agent) will be borne by the subsequent assignee.

The Company and the Guarantor will, in connection with settlement for any Group of Equipment, deliver to the assignee, at the time of delivery by the Owners of notice fixing the Closing Date with respect to such Group, all documents required by the terms of the assignment to be delivered to the assignee in connection with such settlement, in such number of counterparts as may reasonably be requested, except for any opinion of counsel for the assignee.

If the Owners shall not receive on the Closing Date with respect to a Group of Equipment the aggregate Purchase Price in respect of such Group, the Owners will promptly notify the Company and the Guarantor of such event and, if such amount shall not have been previously paid, such Group of Equipment shall be excluded from this Agreement and the Guarantor will, not later than 90 days after the Closing Date, purchase such Group from the Owners for cash, together with interest thereon from such Closing Date to the date of payment by the Guarantor at the average prime rate of interest of the five largest New York City banks in effect at 11:00 a.m., New York time, on such Closing Date.

ARTICLE 17. *Defaults.* In the event that any one or more of the following events of default shall occur and be continuing, to wit:

- (a) The Company shall fail to pay in full any sum payable by the Company when payment thereof shall



be due hereunder and such default shall continue for six days; or

(b) The Company or the Guarantor shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement on its part to be kept and performed or to make provision satisfactory to the Vendor for such compliance; or

(c) Any proceeding shall be commenced by or against the Company or the Guarantor for any relief under any bankruptcy or insolvency laws, or laws relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder) and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Company or the Guarantor, as the case may be, under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed for the Company or the Guarantor or for the property of the Company or the Guarantor in connection with any such proceedings or otherwise given the same status as obligations incurred by such a trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(d) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by

or against the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Guarantor under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(e) The Company shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment; or

(f) An event of default shall occur under the Other Agreement (as defined in Article 3 hereof);

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Company and the Guarantor and upon compliance with any legal requirements then in force and applicable to such action by the Vendor, (i) subject to the rights of the Lessee referred to in Article 12 hereof, cause the Lease immediately upon such notice to terminate (and the Company and the Guarantor each acknowledge the right of the Vendor to terminate the Lease), it being agreed for the benefit of the Vendee that in such event the Guarantor shall remain liable under the Lease to the same extent as if an Event of Default under the Lease (as defined in § 9 thereof) had occurred and the Vendee had terminated the Lease pursuant to § 9 thereof, and/or (ii) declare (hereinafter called a Declaration of Default) the entire unpaid Purchase Price of the Equipment, together with the interest thereon then

accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Purchase Price and such interest shall bear interest from the date of such declaration at the rate of  $10\frac{1}{2}\%$  per annum, compounded quarterly, and the Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of any property of the Company or the Guarantor wherever situated. The Company or the Guarantor, as the case may be, shall promptly notify the Vendor of any event which has come to its attention which constitutes, or would constitute but for the giving of notice and/or lapse of time, an event of default under this Agreement.

The Vendor may waive any such event of default and its consequences and rescind any Declaration of Default or notice of termination of the Lease by notice to the Company and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such default had existed and no declaration or notice of termination of the Lease had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Company and the Guarantor that time is of the essence of this Agreement and that no such waiver or rescission shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. *Remedies.* At any time during a Declaration of Default, the Vendor may, upon such further notice, if any, as may be required for compliance with any mandatory requirements of law then in force and applicable to the action to be taken by the Vendor (subject to the rights of the Lessee under the Lease referred to in Article 12 hereof) take, or cause to be taken by its agent or agents, immediate possession of the Equipment, or any unit thereof,

without liability to return to the Company or the Guarantor any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same from possession and use of the Company or anyone having such possession and use and for such purpose may enter upon the premises of the Company or the Guarantor or where the Equipment may be located and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Company or the Guarantor, with or without process of law.

In case the Vendor shall rightfully demand possession of the Equipment in pursuance of this Agreement and shall reasonably designate a point or points upon the lines of the Guarantor for the delivery of the Equipment to the Vendor, the Guarantor shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points as shall be reasonably designated by the Vendor and shall there deliver the Equipment or cause it to be delivered to the Vendor. At the option of the Vendor, the Vendor may keep the Equipment on any of the lines of railroad or premises of the Guarantor until the Vendor shall have leased, sold or otherwise disposed of the same. For such purpose the Guarantor agrees to furnish without charge for rent or storage, the necessary facilities at any reasonably convenient point or points selected by the Vendor. This agreement to deliver the Equipment as hereinbefore provided is of the essence of this Agreement between the parties, and upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Company and/or the Guarantor requiring specific performance hereof; *provided, however*, that if the Guarantor is in possession of the Equipment, the Vendor shall be entitled to such a decree only against the Guarantor. The Company and the Guar-

antor hereby expressly waive any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment together with interest thereon accrued and unpaid and all other payments due under this Agreement and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Company and the Guarantor by telegram or registered mail, addressed as provided in Article 23 hereof, and to any other persons to whom the law may require notice within 30 days after the entire indebtedness in respect of the Purchase Price of the Equipment shall have been declared immediately due and payable. In the event that the Vendor should elect to retain the Equipment, and no objection is made thereto within the 30-day period described in the second proviso below, all rights of the Company in the Equipment will thereupon terminate and all payment made by the Company or the Guarantor may be retained by the Vendor as compensation for the use of the Equipment; *provided, however*, that if the Company, before the expiration of the 30-day period described in the proviso below should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company; and *provided, fur-*

*ther, however*, that if the Company or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law.

At any time during the continuance of a Declaration of Default, the Vendor with or without the retaking of possession thereof at its election and upon reasonable notice to the Company, the Guarantor and any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all claims of the Company, or of any other party (including the Guarantor) claiming by, through or under the Company, at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if prior to such sale or prior to the making of a contract for such sale, the Company should tender full payment of the entire indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking, holding and preparing the Equipment for disposition and arrangement for the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Company. The proceeds of such sale, or of any lease or other disposition of the Equipment as provided hereunder, less the attorneys' fees and any other expenses incurred by the Vendor in taking possession of, removing, storing and so disposing of the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Vendor may specify, in one lot and as an entirety or in separate lots, and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine; *provided, however*, that the Company and the Guarantor shall be given written notice of such sale as provided hereinabove. If such sale shall be a private sale it shall be subject to the right of the Company and the Guarantor to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale without accountability to the Company or the Guarantor (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Company hereunder.

Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Vendor, except as such exercise may expressly be limited herein. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others, except as such exercise may expressly be limited herein. No delay, except where time limits are expressly herein provided, or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or

remedy or shall be construed to be a waiver of any default or an acquiescence therein.

All sums of money realized by the Vendor under the remedies herein provided shall be applied, *first* to the payment of the expenses and liabilities of the Vendor herein undertaken to be paid, *second* to the payment of interest on the unpaid Purchase Price of the Equipment accrued and unpaid and *third* to the payment of the unpaid Purchase Price of the Equipment. If, after applying as aforesaid all sums of money realized by the Vendor, there shall remain any amount due to it under the provisions of this Agreement, the Company shall pay the amount of such deficiency to the Vendor upon demand, and, if the Company shall fail to pay the full deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Company and the Guarantor. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Company or the Guarantor, as the case may be.

The Company will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are subject in all respects to all mandatory requirements of law at the time in force and applicable thereto.

ARTICLE 19. *Applicable State Laws.* Any provision of this Agreement prohibited by any applicable law of any state shall as to such state be ineffective, without modifying



the remaining provisions of this Agreement. Where, however, the conflicting provisions of any applicable state law may be waived, they are hereby waived by the Company and the Guarantor to the full extent permitted by law, to the end that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Company and the Guarantor, to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of sale thereof, any other requirements with respect to the enforcement of the Vendor's rights hereunder and any and all rights of redemption.

ARTICLE 20. *Extension not a Waiver.* Any extension of time for payment hereunder or other indulgence duly granted to the Company shall not otherwise alter or affect the Vendor's rights or the obligations of the Company or the Guarantor hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Company's or the Guarantor's obligations or the Vendor's rights hereunder with respect to any subsequent payments or defaults therein.

ARTICLE 21. *Recording.* The Company and the Guarantor will cause this Agreement, the first assignment hereof and any supplements hereto and thereto to be filed, recorded or deposited and refiled, re-recorded or redeposited with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and otherwise as may be required by law or reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its title to the Equipment and its rights under this Agreement or for the

purpose of carrying out the intention of this Agreement; and the Company and the Guarantor will promptly furnish to the Vendor evidences of such filing, recording or depositing, and an opinion or opinions of counsel with respect thereto, satisfactory to the Vendor. This Agreement shall be filed and recorded with the Interstate Commerce Commission prior to the delivery and acceptance of any unit of the Equipment.

ARTICLE 22. *Payment of Expenses.* The Guarantor will pay all reasonable costs and expenses (other than the fees and expenses of counsel for the Company) incident to the preparation and execution of this Agreement and the first assignment of this Agreement (including the fees and expenses of an agent, if the first assignee is an agent), or any instrument supplemental thereto, including all fees and expenses of special counsel for the first assignee of this Agreement and for any party acquiring interests in such first assignment, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired in such first assignment. For the purposes of this Article 22, if the first assignee is an agent, then any successor thereto shall be considered the first assignee.

ARTICLE 23. *Notice.* Any notice hereunder to any of the persons designated below shall be deemed to be properly served when delivered to or otherwise received by it at the following specified addresses:

(a) to Brooke/Tricia Corporation, c/o Solomon Brothers & Hutzler at Sixty Wall Street, New York, New York 10005, attention of Layton F. Smith; with a copy to GATX-Armco-Boothe at One Maritime Plaza, San Francisco, California 94111, attention of Contracts Administration,

(b) to the Guarantor, at Six Penn Center Plaza, Philadelphia, Pa. 19104,

(c) to the Owners, at the address specified in Item 2 of Annex A hereto,

(d) to any assignee of the Vendor, or of the Company, at such address as may have been furnished in writing to the Company, or the Vendor, as the case may be, and to the Guarantor, by such assignee,

or at such other address as may have been furnished in writing by such person to the other persons listed above. The Company represents and warrants that its chief place of business is in the State of New York.

ARTICLE 24. *Immunities.* No recourse shall be had in respect of any obligation due under this Agreement, or referred to herein, against any incorporator, stockholder, director or officer, past, present or future, of the Company, the Guarantor or the Vendor, or against any principal or principals (disclosed or undisclosed) of the Company if the Company is acting in an agency or nominee capacity, whether by virtue of any constitutional provision, statute or rule of law or by enforcement of any assessment or penalty or otherwise, all such liability, whether at common law, in equity, by any constitutional provision, statute or otherwise, of incorporators, stockholders, directors, officers or principals being forever released as a condition of and as consideration for the execution of this Agreement.

ARTICLE 25. *Effect and Modification of Agreement.* This Agreement, and the annexes relating hereto, exclusively and completely state the rights and agreements of the Vendor, the Company and the Guarantor with respect to the Equipment and supersede all other agreements, oral or written, with respect to the Equipment. No variation of this Agreement and no waiver of any of its provisions or

conditions shall be valid unless in writing and duly executed on behalf of the Vendor, the Company and the Guarantor.

ARTICLE 26. *Law Governing.* The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the State of New York; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or depositing hereof and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

ARTICLE 27. *Definitions.* The term "Vendor", whenever used in this Agreement, means, before any assignment of any of their rights hereunder, the persons named in Item 1 of Annex A hereto and any successor or successors for the time being to their rights, powers, duties and obligations, and, after any such assignment, both any assignee or assignees for the time being of such particular assigned rights as regards such rights, and also any assignor or assignors as regards any rights hereunder that are retained or excluded from any assignment; and the term "Owners" whenever used in this Agreement, means, both before and after any such assignment, the persons named in Item 1 of Annex A hereto and any successor or successors for the time being to their rights, powers, duties and obligations.

ARTICLE 28. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of March 1, 1970, for convenience, the actual date or

dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have executed this instrument or, pursuant to due corporate authority, have caused this instrument to be executed in their respective corporate names by duly authorized officers, and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

Witnessed:

D. F. Bennett..... W. O. Brem.....  
W. O. BREM

D. F. Bennett..... T. K. Hand, Jr.....  
T. K. HAND, JR.

BROOKE/TRICIA CORPORATION

by

*[Signature]*  
President

[CORPORATE SEAL]

Attest:

*[Signature]*  
Secretary

PENN CENTRAL TRANSPORTATION  
COMPANY,

by

*[Signature]*  
Assistant Vice President

[CORPORATE SEAL]

Attest:

*[Signature]*  
Assistant Secretary

STATE OF NEW YORK }  
 COUNTY OF NEW YORK } ss.:

On this 17<sup>th</sup> day of April, 1970, before me personally appeared Rayton B. Smith, to me known, who, being by me duly sworn, says that he is ~~the~~ President of BROOKE/TRICIA CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Catharine Hargrove

Notary Public

[NOTARIAL SEAL]

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss.:

On this 17<sup>th</sup> day of April, 1970, before me personally appeared W. O. BREM and T. K. HAND, JR., to me personally known to be the persons described in and who executed the foregoing instrument, and each of them acknowledged that the execution of the foregoing instrument was his free act and deed.

Edward A. Conners  
 Notary Public

[NOTARIAL SEAL]

My Commission Expires:

EDWARD A. CONNERS

Notary Public, Philadelphia, Philadelphia Co.

My Commission Expires April 1, 1972

COMMONWEALTH OF PENNSYLVANIA }  
 COUNTY OF PHILADELPHIA } ss:

On this 17<sup>th</sup> day of April, 1970, before me personally appeared **J. B. Bermond**, to me personally known, who, being by me duly sworn, says that he is an Assistant Vice President of PENN CENTRAL TRANSPORTATION COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*William J. O'Neill*  
 Notary Public

[NOTARIAL SEAL]

WILLIAM J. O'NEILL  
 Notary Public, Philadelphia, Philadelphia Co.  
 My Commission Expires June 26, 1972

My Commission Expires:

**ANNEX A—BREM AND HAND**

- Item 1: W. O. Brem and T. K. Hand, Jr.
- Item 2: 34 Windsor Avenue, Upper Darby, Pennsylvania  
19082.
- Item 3: The Conditional Sale Agreement dated as of  
March 1, 1970, among the Company, the Guar-  
antor and J. A. Zerbe and R. J. Young.



## ANNEX B—BREM AND HAND, JR.

<u>Type and Specifications</u>	<u>Quantity</u>	<u>Lessee's Road Numbers (Inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>
60' 100-Ton Box Cars	90	220880- 220889 220893- 220946 275386- 275398 279031- 279043	\$25,780	\$2,320,200
60' 100-Ton Box Cars	79	220947- 221025	23,000	1,817,000
50' 100-Ton Box Cars	14	210939- 210952	19,543	273,602
86' 100-Ton Box Cars	47	295713- <sup>20</sup> 295759 <sup>76</sup>	28,400	1,334,800
60' 100-Ton Box Cars	32	275412- 275443	25,359	811,488
50' 70-Ton Air Pak Cushion Cars	55	264596- 264650	22,848	1,256,640
55' 100-Ton Coil Steel Cars	65	752735- 752799	21,633	1,406,145

# ANNEX B--ZERBE AND YOUNG

Type and Specifications	Quantity	Lessee's Road Numbers (Inclusive)	Unit Base Price	Total Base Price
52'6" 100-Ton Gondola Cars	500	578750- 579249	\$14,200	\$7,100,000
65' 70-Ton Gondola Cars	51	592000- 592050	18,250	930,750
Cabooses	55	18545- 18599	15,367	845,185

NOTICE OF ASSIGNMENT

This is to advise that, effective April 1, 1976,  
12:01 a.m., the Financing Agreement described below has  
been assigned to the Consolidated Rail Corporation by the  
Trustees of: Penn Central Transportation Company  
Six Penn Center Plaza  
Philadelphia, PA 19104

The Financing Agreement is a Lease Agreement  
, dated 3/1/70  
bearing the ICC recordation number 5685  
The payee's name and address is:

First Pennsylvania Bank of Philadelphia  
Fifteenth and Chestnut Streets  
Philadelphia, Pennsylvania 19101

This Notice of Assignment has been placed in the  
file of the ICC recordation number listed above and the entire  
assignment is contained in the ICC recordation file stamped  
in the margin of this assignment. A copy hereof will be  
promptly mailed to the payee listed above for distribution  
to the beneficial holder(s) of the Financing Agreement described  
in this Notice of Assignment.

Consolidated Rail Corporation